

EXHIBIT 2

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS
3

4 CHRISTA KATSENES,)

5 Plaintiff and)
6 Defendant in Counterclaim,)

7 v.)

8 U.S. BANK TRUST N.A.,)

9 Defendant and)
Plaintiff in Counterclaim.)

Civil Action
No. 1:19-CV-12112-DJC

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12 BEFORE THE HONORABLE MARIANNE B. BOWLER
13 UNITED STATES MAGISTRATE JUDGE

14 MOTION HEARING
15 VIA TELEPHONE

16 September 21, 2020
17 12:02 p.m.

18 John J. Moakley United States Courthouse
19 One Courthouse Way
20 Boston, Massachusetts 02210

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22 Linda Walsh, RPR, CRR
23 Official Court Reporter
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16 Proceedings reported and produced
17 by computer-aided stenography.
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P R O C E E D I N G S

THE CLERK: United States District Court for the District of Massachusetts is now in session, the Honorable Marianne B. Bowler presiding. Today is September the 21st, 2020, in the matter of *Katsenes versus U.S. Bank Trust N.A.*, Civil 19-12112, which will now be heard.

As a reminder to everyone on the call, any recording or rebroadcasting of the court proceeding is prohibited, and doing so may result in sanctions as deemed appropriate or necessary by the Court.

So with that having been said, will counsel please identify themselves for the record, beginning with the plaintiff.

MR. McLAUGHLIN: Good afternoon again. This is Attorney Robert McLaughlin, Sr. I represent Christa Katsenes, who is not only plaintiff but also defendant in counterclaim.

On the phone with me is Sylvia Katsenes, who is not a member of the Federal Bar but a member of the Mass. Bar. And, Your Honor, I may say, she's taken your advice and she is now an applicant for the Federal Bar.

THE COURT: I'm glad to hear it.

MS. SYLVIA KATSENES: Good afternoon, Your Honor. Sylvia Katsenes here.

THE COURT: Thank you.

MS. CHARPENTIER: Good afternoon, Your Honor.

1 Julianna Charpentier on behalf of U.S. Bank Trust N.A.

2 THE COURT: Thank you very much.

3 Well, it's your motion, Docket Entry Number 52, motion
4 to modify the subpoenas. So let me hear you.

5 MS. CHARPENTIER: Thank you, Your Honor.

6 So three subpoenas have been issued, one to U.S. Bank,
7 one to Vylla Title, and one to the law firm Doonan, Graves &
8 Longoria. There are a number of requests in those subpoenas
9 which are simply outside the scope of discovery. Irrespective
10 of the fact that a protective order has been issued in this
11 case, the protective order does not entitle a party to seek
12 documents outside the scope of discovery.

13 So there are certain specific -- so I should --

14 THE COURT: Well, let's go through them one by one.
15 I'll hear your argument and then I'll hear Mr. McLaughlin's.

16 MS. CHARPENTIER: Okay. Thank you, Your Honor.

17 I should say that some production has been made by
18 each of those three recipients of the subpoenas already.
19 Largely, any documents that have already been produced which we
20 had objected to, we objected to on grounds of relevance. So we
21 have -- to the extent those documents were already produced, I
22 mean, they neither help nor harm either party, in our view,
23 because they were simply irrelevant and therefore outside the
24 scope of discovery. But to the extent they have been produced,
25 we're not going to challenge that.

1 We'll start with Bank of America. So the number
2 of -- there was an issue with the wording, specifically for
3 Topic 1. We have no problem with the way -- with the specific
4 documents requested, but it does include language "but is not
5 limited to." And that, I believe, takes it outside the scope
6 of discovery, and it's impermissibly broad because it would
7 call -- this mortgage was purchased -- the mortgage at issue
8 was purchased with a number of loans. To the extent any of
9 those -- any information as to the other loans would fall into
10 that "but is not limited to," we object to that.

11 THE COURT: Mr. McLaughlin?

12 MR. McLAUGHLIN: I'm absolutely not interested in any
13 loan except the loan in question to William Katsenes, as a
14 matter of fact what's been produced. I believe everything else
15 has already been redacted with regard to the other loans.

16 THE COURT: All right. So one is not an issue?

17 MR. McLAUGHLIN: One is an issue, Your Honor, if I may
18 be heard. You have already ruled when this document -- the
19 basic assignment document was withheld completely. You've
20 already ruled that they need to produce it. They did produce
21 it. We have no problem with them redacting the names of other
22 loans, but they did redact a series of loan provisions of the
23 document which relate primarily to the warranties that were
24 made and some limitations on the warranties. And if I may say,
25 Your Honor, except for the names of other people, the key

1 document that gives them the authority to have standing in this
2 case -- because the mortgage and the note is not made out to
3 Bank U.S. It's made out to Bank of America. That is the
4 assignment document. That is the fundamental document that
5 gives them the standing and is -- I think we absolutely are
6 entitled to see the whole document with the exception of any
7 private information of anything else.

8 I will get to my argument later as to why the
9 warranties are so important to us. Well, I mean, basically I
10 can succinctly say right now, there is a warranty that there is
11 good clear title for the basis of foreclosure. And they have
12 an absolute right -- the defendant bank in this case has an
13 absolute right to rescind that transaction and go back against
14 the bank and suffer no damage at all.

15 This is an equity proceeding in which we balance the
16 interests of the parties and the benefit and the detriment to
17 each. So it's absolutely a key document we need to see in its
18 entirety.

19 THE COURT: All right. The warranties go to damages,
20 and therefore are relevant and therefore should be produced.

21 MS. CHARPENTIER: Your Honor, if I just might be
22 heard. The plaintiff is not a party to the agreement between
23 Bank of America and U.S. Bank. To the extent there is any
24 warranty, as the plaintiff counsel stated, the plaintiff would
25 have no standing to enforce -- would have no standing -- is not

1 a beneficiary of the agreement between U.S. Bank and Bank of
2 America. And -- sorry, Your Honor. I'll stop there.

3 THE COURT: No, my ruling stands.

4 MS. CHARPENTIER: Okay.

5 THE COURT: Next?

6 MS. CHARPENTIER: So next I believe would be the
7 subpoena to the law firm Doonan, Graves & Longoria. They have
8 responded to that subpoena. They have not produced the
9 information which we were concerned about. So I guess my
10 concern is only if plaintiff's counsel intends to pursue any
11 information which would -- any topic that would call for
12 privileged information.

13 THE COURT: Can we work around that, Mr. McLaughlin?

14 MR. McLAUGHLIN: Yes, of course we can.

15 First of all, it's not up to the bank to assert the
16 privilege. And of the documents they've produced so far, the
17 law firm has not asserted any privilege on behalf of their own
18 client, which is the defendant bank in this case.

19 The documents I'm looking for is their relationship
20 with the Bank of America, as the brief that I filed indicates.
21 We have found out so far in discovery that there was a title
22 insurance policy that guarantees clear record title for the
23 property in question. In fact, the Doonan firm, which we found
24 out so far, made a demand under that policy. And there's
25 correspondence back and forth, and the title insurance company

1 is saying, well, this is supposed to be a replacement policy
2 and so -- then it fades away. And what it appears and very
3 well may have happened is, they may have paid the claim. In
4 any event, what we know because the new counsel that has come
5 in, the firm presently representing the defendant bank, is the
6 counsel for the title insurance company. So what we're facing
7 here is who's the real party in interest.

8 And I humbly suggest, and I'll get to this later in my
9 argument, this is equity where you balance the totality of the
10 circumstances between the two parties to do the fair and right
11 thing. And it looks -- the warrantable inference is the real
12 party here now is the title insurance company, and they are
13 masquerading behind an alleged innocent party that's lost
14 \$500,000 when in fact it is they who were paid, and paid
15 handsomely, to take this risk and somehow or other made a
16 mistake and issued a policy when it was possible that William
17 died first and the loan would be extinguished, and of course
18 that's what happened.

19 Secondly on this -- on this issue, a very strange
20 event. The policy -- the title insurance policy was not issued
21 in 2005 when the loan was taken out. The first time I've ever
22 seen this in the practice of law. It was issued in 2016, and
23 2016 is the time that the Bank U.S. bought the mortgage from
24 Bank of America. And the only inference that I can have -- and
25 to get a policy at that time and make it retroactive back to

1 the original date is they knew this mortgage was -- the
2 mortgage was bad or capable of becoming bad if William died
3 first.

4 If that is so, the law of subrogation is crystal
5 clear. If you are a volunteer -- and that would make them a
6 volunteer, buying paper that they know was subject to being
7 extinguished upon the death of William first. They are a
8 volunteer. The law is crystal clear that bars them from any
9 subrogation theory. The law is clear that if someone puts
10 their skin in the game and takes the risk and it turns out that
11 they're a loser, they can't look to another person to claim
12 equity to make them whole. The whole of these title insurance
13 documents, and what happened and who's the party, is
14 fundamental to the defense of this case, which is an equitable
15 case.

16 Thank you, Your Honor.

17 THE COURT: You're welcome.

18 Ms. Charpentier?

19 MS. CHARPENTIER: Your Honor, we didn't object to the
20 topics related to the rendering of title insurance and issuance
21 of the title insurance policy. We object to the further
22 documents sought, which are intruding on the relationship
23 between the insurer and the insured. Title insurance does not
24 exist to just cut a check in the event -- in the event of a
25 title defect. It exists to remedy the title defect, and the

1 methods by which it does so -- again, the plaintiff has no
2 standing to dictate how the title insurance and their insured
3 operate.

4 MR. McLAUGHLIN: Your Honor, if I could respond to
5 that?

6 MS. CHARPENTIER: So it's not a defense of equitable
7 subrogation. Sorry. Go ahead.

8 MR. McLAUGHLIN: If I could respond to that?

9 There is no issue in this case. Title cannot be
10 remedied. Title, if anything, is absolutely clear. When
11 William died, the mortgage was extinguished. They are seeking
12 in equity to put themselves in the shoes of mortgages that were
13 pre-existing in which Christa was liable and so forth.

14 So that it's not a matter of determining title. It's
15 a matter of trying to find somebody else to pay the claim that
16 they should be paying, and that's very relevant in the equity
17 of this situation in balancing the interest.

18 THE COURT: Well, it seems clear to me that the title
19 insurance policy is subject to production.

20 MS. CHARPENTIER: That has been produced, Your Honor.

21 THE COURT: I mean, first, the automatic disclosure
22 provisions of Federal Rule of Civil Procedure 26(a)(1)(A)(iv)
23 require, and I quote, "For inspection and copying as under Rule
24 34 any insurance agreement under which an insurance business
25 may be liable to satisfy all or part of a possible judgment in

1 the action or to indemnify or reimburse for payments made to
2 satisfy the judgment."

3 So, I mean, it seems clear to me it's discoverable,
4 but it should be discovered, I would think, from the title
5 agent.

6 MS. CHARPENTIER: Your Honor, the title insurance
7 policy has been produced.

8 MR. McLAUGHLIN: Do you want me to catch you up?

9 MS. CHARPENTIER: We're objecting to the --

10 THE COURT: I must ask you to please speak one at a
11 time for the benefit of the court reporter. It's not easy
12 doing this over the telephone.

13 MR. McLAUGHLIN: This is Attorney Robert McLaughlin.
14 The policy has been produced. It was produced, I believe, in
15 the initial disclosure, if not on the prior disclosure of the
16 request for production of documents. There's no issue about
17 the policy of what it says, and on the four corners of the
18 policy issued there is a good clear title in this.

19 The issue here is who is the real party in interest
20 and were they a volunteer and was the policy produced because
21 they knew they -- they had a bad mortgage, and so we need more
22 than the policy. I need the correspondence that went on
23 between the lawyers for the defendants and Bank of America to
24 find out in the totality what's happening.

25 As I see this, if there's any legs to the argument

1 that the defendant bank is making, let's get the documents out
2 and then we'll have motions in limine before the trial. But
3 how do we have motions in limine when we don't know what the
4 totality of the documents in the relationship with the title
5 insurance policy is.

6 THE COURT: Well, I think any documents relating to
7 payment under the policy are relevant and should be produced.

8 MR. McLAUGHLIN: Yeah, I assume there's correspondence
9 back and forth whether -- there is correspondence I've seen so
10 far, and then it just fades away. And then suddenly there's a
11 change in counsel, and in comes the counsel for the title
12 insurance company. Now they're the real party in interest.
13 That's a fundamental fact and a fundamental defense that -- in
14 balancing equities. The title insurance company shouldn't be
15 able to push this off on the surviving 79-year-old widow.

16 THE COURT: Well, any correspondence and -- any
17 correspondence that relates to claims or relates to payment
18 should be produced.

19 MS. CHARPENTIER: Your Honor, much of that has already
20 been produced. We object to the notion that the plaintiff has
21 not been unjustly enriched here and that the title insurance or
22 the defendant should bear that. So that is the crux of
23 equitable subrogation is the unjust enrichment of the
24 plaintiff, that her debt is being paid off.

25 Again, we object to the characterization also that the

1 existence of title insurance means there are damages. The
2 title insured is entitled to, as counsel has indicated, pay for
3 my services to remedy the title defect by pursuing a claim in
4 equity. There's no prohibition in Massachusetts on a party
5 with insurance pursuing a claim in equity. So there's --

6 THE COURT: Well, that's an issue for down the road,
7 but -- to be produced.

8 All right. Next?

9 MS. CHARPENTIER: Let me back up, Your Honor. I
10 believe we kind of muddled between the law firm and the title
11 insured's subpoenas.

12 MR. McLAUGHLIN: I think we did. As I understand, it
13 is the action with agent that both the policy and everything
14 we've been saying back and forth I think on the prior title
15 insurance policy was covered in that.

16 But to make sure we have all of the documents, whoever
17 wrote the policy and whoever made a mistake on title or knew
18 what they were doing -- it may well be -- this is a line of
19 credit. It may well be that the Bank of America knew exactly
20 they were only getting a husband's interest in this tenancy by
21 the entirety, which is a very good mortgage on his interest if
22 he survives. So that we're entitled to know if they took that
23 risk and knowingly took that risk. Also it's part of what
24 should be considered by a court in equity in seeing whether
25 they can now go after the widow.

1 THE COURT: I agree. To be produced.

2 MS. CHARPENTIER: Okay. So I think that brings us to
3 the end of it. The crux of our objections were the relevance
4 issues, which have basically already been included in the
5 production and then what Your Honor has already ruled on in
6 terms of the warranty and title insurance.

7 THE COURT: All right. Anything else?

8 I see that you have a motion to extend discovery time,
9 but I think that is for Judge Casper. It has not been
10 referred.

11 MS. CHARPENTIER: I believe so, Your Honor.

12 THE COURT: All right.

13 MR. McLAUGHLIN: Just a concern I have, that's the end
14 of November. I have got to now get these documents. And I
15 hope we don't have any more discovery fights. I don't like
16 discovery fights. I'm sure Your Honor doesn't like discovery
17 fights.

18 THE COURT: Well, neither do I, Mr. McLaughlin.

19 MS. CHARPENTIER: And, Your Honor, I would just like
20 to note that we will be producing pursuant to the protective
21 order in this case.

22 THE COURT: Yes.

23 MR. McLAUGHLIN: Oh, absolutely. There's no problem
24 under the protective order.

25 THE COURT: Can you give us some idea of the time

1 line?

2 MS. CHARPENTIER: So I will have to get our redacted
3 version from my client. Would two weeks work?

4 THE COURT: Is that okay, Mr. McLaughlin?

5 MR. McLAUGHLIN: That's fine.

6 THE COURT: All right. All right. In the interim,
7 please stay safe and stay well.

8 MR. McLAUGHLIN: And the same to Your Honor.

9 MS. CHARPENTIER: Thank you, Your Honor.

10 MS. SYLVIA KATSENES: Thank you.

11 THE COURT: We stand in recess.

12 (Adjourned at 12:19 p.m.)
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1 CERTIFICATE OF OFFICIAL REPORTER

2
3 I, Linda Walsh, Registered Professional Reporter
4 and Certified Realtime Reporter, in and for the United States
5 District Court for the District of Massachusetts, do hereby
6 certify that the foregoing transcript is a true and correct
7 transcript of the stenographically reported proceedings held in
8 the above-entitled matter, to the best of my skill and ability.

9 Dated this 29th day of September, 2020.

10
11
12 /s/ Linda Walsh

13 Linda Walsh, RPR, CRR

14 Official Court Reporter
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